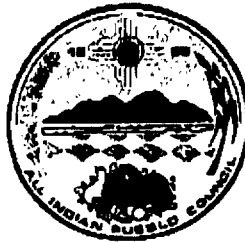


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ALL INDIAN PUEBLO COUNCIL
OFFICE OF THE CHAIRMAN
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the mater of

WT Docket No. 99-266

Extending Wireless
Telecommunications Services
to Tribal Lands

COMMENTS OF THE ALL INDIAN PUEBLO COUNCIL

The All Indian Pueblo Council respectfully wishes to make the following comment on the above-entitled Notice of Proposed Rulemaking and make provision for possible future comment. The All Indian Pueblo Council is located in Albuquerque, New Mexico, and represents nineteen Pueblo tribal governments. The citizens of these tribal governments experience penetration rate problems similar to those described in the Notice of Proposed Rulemaking on tribal reservation lands.

The All Indian Pueblo Council is not expert with respect to technical telecommunications matters, and therefore, will not make comment at this time upon the more technical of the possible regulatory initiatives presented in the proposed rulemaking. This comment will touch on the aspects of tribal sovereignty and the federal trust relationship raised in various provisions of the proposed rulemaking.

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An important point of clarification, particularly with respect to pueblo tribal governments in New Mexico, would be the use of the term "Indian Lands". Indian lands are referred to as "Indian Country", the definition of which is provided at 18 U.S.C 1151. Indian Country includes reservations, formal or informal Indian allotments, and dependent Indian communities. The definition of Indian Country was crafted for federal criminal law purposes; however, it applies equally to federal civil jurisdiction. We suggest the Commission adopt this definition in it further rulemaking. Use of the term Indian Country will assure uniformity by clearly including tribal citizens residing on federal trust reservation lands in New Mexico.

With respect to possible regulatory initiatives designed to encourage wireless carriers to provide basic service on tribal lands, the granting of "Additional Flexibility" in the licensing procedure should be predicted upon the existence of, and compliance with, a binding agreement between the licensee and the relevant tribal authority. The importance of tribal sovereignty in this procedure is paramount. Inherent in tribal sovereign authority is the right to control certain activities on tribal lands. This includes the right to regulate and tax nonmember cooperation's doing business on tribal lands. It is a fundamental premise in the law that a tribe may regulate, through licensing, taxation, or by other means, the activities of nonmembers who enter consensual relationships with the tribe or its members through commercial dealing, contracts, leases or other arrangements. A wireless carrier wishing to provide service on tribal lands must have tribal consent as a practical matter; therefore, whether it imposes additional burdens upon licenses is a moot question. Similarly moot is the question of whether tribal government consent should be required for the Commission to approve transfers and assignments that affect the service provided.

With respect to the implementation of such a requirement, the All Indian Pueblo Council is encouraged by the awareness of the Commission of the importance of the special trust relationship between tribal governments as domestic sovereigns and the federal government. In considering the licensing aspects for a service provider to engage in the provision of wireless communications on tribal lands, the federal government consults with each tribe on a government-to-government basis. This process is the foundation of the trust responsibility of the United States for American Indian tribes and their citizens. Through the trust relationship the true nature of any agreement between the license and the tribe shall be obtained.

Finally, the All Indian Pueblo Council is encouraged also by the breadth of the possible marketplace incentives presented in the Notice of Proposed Rulemaking. The consideration to provide licensees with special licensing areas and bidding credits, and the potential availability to tribes of drop-in licenses are possibilities that may represent effective methods to address low penetration rates. The All Indian Pueblo Council recognizes the need for these financial and regulatory incentives to effectively deal with the variety of unique tribal situations that impede telephone penetration throughout Indian Country.

The All Indian Pueblo Council wishes to thank Chairman Kennard and his colleagues on the Commission, especially Commissioner Tristani, for their continued efforts and commitment to solve this problem in Indian Country, and looks forward to further participation in the rulemaking process on this very important matter.